

SUPREME COURT OF THE UNITED STATES.  
OCTOBER TERM, 1918.

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No. 472.

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PHILADELPHIA, BALTIMORE AND  
WASHINGTON RAILROAD COMPANY,  
PETITIONER,

vs.

ALFRED H. SMITH.

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF  
MARYLAND.

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OPPOSITION TO MOTION TO AFFIRM JUDGMENT OF  
THE COURT OF APPEALS OF MARYLAND.

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In opposing motion of respondent to affirm the judgment of the Court of Appeals of Maryland in this case, petitioner respectfully refers to its statement of case, its claim of error in matter of law and its brief citing cases in support of such claim, sub-

mitted to this honorable Court October 7, 1918, in connection with its petition for certiorari.

As that petition was granted and writ of certiorari ordered to issue on October 21, 1918, after such consideration of the questions involved as the Court deemed necessary for their full appreciation, it can hardly be manifest that the writ was either asked for or granted "for delay only," or "that the questions on which the decision of the cause depend are so frivolous as not to need further argument" (Rules of Practice, Supreme Court U. S., See. 5, Rule No. 6, Motions).

As indicated in the petition for certiorari, the principal question on which the decision of the cause depends, is whether the plaintiff, who was employed and paid by your petitioner to clean a certain "camp car," and therein to cook food-stuffs purchased by him at the individual expense of himself and associates, members of a "bridge gang" likewise in the employ of petitioner, was at the time of receiving the injuries of which he complains "performing any work so closely connected 'with' interstate commerce 'as to be a part of it,' " the specific work upon which he was then engaged being the cooking of dinner for the bridge carpenters, who were engaged at a distance from the "camp car" in repairing a bridge forming part of petitioner's line of railroad used in the moving of both interstate and intrastate commerce.

As heretofore indicated, the contention of your petitioner is that the work upon which plaintiff Smith was then and for at least three weeks previously had been engaged, viz., cleaning the camp car and preparing meals for his associates and co-employees, the bridge carpenters, was "work being done independently of the interstate commerce in which" your petitioner was engaged, and its performance or not was "matter of indifference, so far as that commerce was concerned."

Erie R. R. Co. vs. Welsh, 242 U. S., 303.

Illinois Central R. R. Co. vs. Behrens, 233  
U. S., 473.

As to so much of respondent's motion as asks summary affirmance of the judgment of the Court of Appeals of Maryland without further argument, it would seem that nothing more need be said.

The questions for decision, though important and of public interest, do not call for extended discussion. Petitioner does not object, but, on the contrary, readily assents, that this cause may be transferred to the summary docket and assigned for hearing at such day as may best suit the convenience of the Court.

FREDERIC D. MCKENNEY,  
JOHN SPALDING FLANNERY,

*Attorneys for Plaintiff.*

February 10, 1919.